

(16,237.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 147.

THE DEL MONTE MINING AND MILLING COMPANY,
APPELLANT,

vs.

THE LAST CHANCE MINING AND MILLING COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE EIGHTH CIRCUIT.

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1 In the Supreme Court of the United States.

THE DEL MONTE MINING AND MILLING COMPANY, Appellant, }
 vs.
 THE LAST CHANCE MINING AND MILLING COMPANY, Appellee. }

On a certificate from the United States circuit court of appeals for the eighth circuit.

The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Louis, Missouri, on this ninth day of March, A. D. 1896, hereby certifies that upon the record on file in said court in the cause wherein The Del Monte Mining and Milling Company is appellant and The Last Chance Mining and Milling Company is appellee, and which cause is now pending before this court upon appeal from the circuit court of the United States for the district of Colorado, the following facts are made to appear:

That the appellant is the owner in fee of the Del Monte Lode mining claim, located in the Sunnyside mining district, Mineral county, Colorado, for which it holds Government patent bearing date February 3rd, 1894, pursuant to an entry thereof made at the Del Norte land office on February 27th, 1893.

Said patent is in words and figures as follows:

General Land Office No., 23885. Mineral certificate No. 286.

THE UNITED STATES OF AMERICA.

To all — whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, and legislation supplemental thereto, there have been deposited in the
 2 General Land Office of the United States the plat and field-notes of survey and the certificate No. 286, of the register of the land office at Del Norte in the State of Colorado, accompanied by other evidence whereby it appears that the Del Monte Mining and Milling Company did, on the twenty-seventh day of February, A. D. 1893, duly enter and pay for that certain mining claim or premises, known as the Aspen and Del Monte Lode mining claims designated by the surveyor general as lot No. 7356, embracing a portion of sections thirteen, fourteen and twenty-four, in township forty-two north of range one west, New Mexico meridian in the Sunnyside mining district, in the county of Hinsdale and State of Colorado, in the district of lands subject to sale at Del Norte and bounded, described, and platted as follows, with magnetic variation fifteen degrees and thirty minutes east.

Beginning for the description of the Aspen Lode claim at corner No. 1, a spruce post five inches square marked 1+7356, with mound of stone from which U. S. locating monument No. 7333 bears north one degree, twelve minutes and thirty seconds east one thousand seven hundred and fifty-one and six-tenths feet distant; the west

quarter corner of section twenty-four in township forty-two north range one west, New Mexico meridian, bears south thirteen degrees and ten minutes west two thousand one hundred and eighty-six and three-tenths feet distant; a spruce tree ten inches in diameter blazed and marked B. T. 1 + 7356 bears north thirteen degrees and fifteen minutes west sixteen feet distant, and a spruce tree nine inches in diameter blazed and marked B. T. 1 + 7356 bears north five degrees and forty-five minutes west twenty-one and five-tenths feet distant.

Thence, first course, north fifty-nine degrees and forty minutes east one hundred and fifty feet to a point from which discovery shaft bears north thirty degrees west eight hundred and ten feet distant; three hundred feet to corner No. 2.

Thence, second course, north thirty degrees and five minutes west one thousand four hundred and ninety-two and three-tenths feet to corner No. 3.

Thence, third course, south fifty-nine degrees and forty minutes west two hundred and ninety-eight feet to corner No. 4.

Thence, fourth course, south thirty degrees east one thousand four hundred and ninety-two and thirty-five hundredths feet to corner No. 1 the place of beginning; the survey of the lode as above described extending one thousand four hundred and ninety-two and two-tenths feet in length along said Aspen vein or lode.

Beginning for the description of the Del Monte Lode claim at corner No. 5, a spruce post five inches square marked 2-5 + 7356, with mound of stone, being also corner No. 2 of said Aspen Lode claim, from which corner No. 3 of survey No. 7263 A. the Last Chance Lode claim, bears north fifty-three minutes west two hundred and fifty-one and fifty-four hundredths feet distant; corner No. 9 of survey No. 7296, the Forest King Lode mining claim bears north sixty-four degrees and seventeen minutes east one hundred and twenty-eight and six-hundredths feet distant; a spruce tree nine inches in diameter blazed and marked B. T. 2-5 + 7365 bears north seventy-one degrees east twenty-eight and one-tenth feet distant; a spruce tree twelve inches in diameter blazed and marked B. T. 2-5 + 7365 bears north eighteen degrees and forty-five minutes east twenty-seven and nine-tenths feet distant, and the discovery shaft bears north seventeen degrees and fifty-one minutes west eight hundred and eleven and two-tenths feet distant.

3 Thence, first course, north fifty-nine degrees and forty minutes east two hundred and twenty-four and twenty-seven hundredths feet intersect line 3-4 of survey No. 7406, the New York Lode claim at south thirty-three degrees and forty-two minutes east one thousand and ninety-three and thirty-eight hundredths feet from corner No. 3; two hundred and ninety-seven and six-tenths feet to corner No. 6.

Thence, second course, north thirty degrees and twenty-two minutes west one hundred and fifty-three feet intersect line 2-3 of said survey No. 7263 A. at north eighty degrees and twenty-five minutes east one hundred and eighty-six feet from corner No. 3; six hundred and eighty-nine and eight-tenths feet intersect line 3-4 of said survey No. 7263 A. at north ten degrees and four minutes west five

hundred and one and seven-tenths feet from corner No. 3; one thousand and eighty-nine and seventy-two hundredths feet intersect line 2-3 of said survey No. 7406 at north sixty degrees and twenty-six minutes east one hundred and thirty-six and ninety-two hundredths feet from corner No. 3; one thousand four hundred and ninety-two and two-tenths feet to corner No. 7.

Thence, third course, south fifty-nine degrees and forty minutes west two hundred and ninety and fourteen-hundredths feet to corner No. 8, being also corner No. 3 of said Aspen Lode claim.

Thence, fourth course, south thirty degrees and five minutes east one thousand four hundred and ninety-two and three-tenths feet to corner No. 5, the place of beginning, the survey of the lode as above described extending one thousand four hundred and ninety-two and two-tenths feet in length along said Del Monte vein or lode, expressly excepting and excluding from these presents all that portion of the ground hereinbefore described, embraced in said mining claim or survey No. 7263 A. and that portion of said survey No. 7406 which is described as follows: Beginning at the point of intersection of line 2-3 of said survey No. 7263 A with line 3-4 of said survey No. 7406 at north eighty degrees and twenty-five minutes east ninety-six and twenty-four hundredths feet from corner No. 3 of said survey No. 7263 A. and at south thirty-three degrees and forty-two minutes east nine hundred and eight and forty-four hundredths feet from corner No. 3 of said survey No. 7406; thence north thirty-three degrees and forty-two minutes west two hundred and thirty-nine and eighty-nine hundredths feet; thence, north ten degrees and four minutes west two hundred and eighty-two and seventy-seven hundredths feet; thence south thirty degrees and twenty-two minutes east five hundred and thirty-six and eight-tenths feet; thence south eighty degrees and twenty-five minutes west eighty-nine and seventy-six hundredths feet to the place of beginning; and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground, the granted premises in said lot No. 7356 containing nineteen acres and twenty-five hundredths of an acre of land, more or less.

Now know ye, that there is therefore hereby granted by the United States unto the said The Del Monte Mining & Milling Company, and to its successors and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Aspen and Del Monte vein, lodes or ledges and of all other veins, lodes and ledges, throughout their entire depth, the tops or apexes of which lie inside of the surface

boundary lines of said granted premises in said lot No. 7356
 4 extended downward vertically, although such veins, lodes, or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises: Provided, that the right of possession to such outside parts of said veins, lodes, or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 7356, so continued in their own direction that such planes will intersect such exterior parts of said veins,

lodes, or ledges: And provided further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to its successors and assigns forever; subject nevertheless to the above-mentioned and to the following conditions and stipulations:

First. That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode, or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode or ledge.

Second. That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

Third. That in the absence of necessary legislation by Congress, the legislature of Colorado may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to complete its development.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the third day of February, in the year of our Lord one thousand, eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

By the President:

[SEAL.]

GROVER CLEVELAND,
By M. McKEAN, *Secretary*.
L. Q. C. LAMAR,
Recorder of the General Land Office.

The appellee is the owner of the Last Chance Lode mining claim under a patent dated July 5th, 1894, based upon an entry of March 1st, 1894, in the Del Norte land office, which is in words and figures as follows:

5 General Land Office No., 24532. Mineral certificate No. 324.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes

of the United States, chapter six, title thirty-two, and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the plat and field-notes of survey and the certificate, No. 324, of the register of the land office at Del Norte, in the State of Colorado, accompanied by other evidence whereby it appears that Ralph Granger, Erich von Buddenbrock and Theodore Reininger did, on the first day of March, A. D. 1894, duly enter and pay for that certain mining claim or premises, known as the Last Chance Lode mining claim, designated by the surveyor general as lot No. 726 A, embracing a portion of sections thirteen and twenty-four, in township forty-two north, of range one west, New Mexico meridian, in the Sunnyside mining district, in the county of Mineral and State of Colorado, in the district of lands subject to sale at Del Norte, and bounded, described and platted as follows, with magnetic variation fifteen degrees and thirty minutes east:

Beginning at corner No. 1, a spruce post four inches square, marked 1/7263 A, with mound of stones, from which the west quarter corner of section twenty-four, in township forty-two north, of range one west, New Mexico meridian, bears south, twelve degrees and five minutes west, three thousand nine hundred and twenty-seven and eight-tenths feet distant; U. S. locating monument No. 7333 bears north, eighty-one degrees and fifty-five minutes west, two hundred and eighty-eight and seven-tenths feet distant; a spruce fourteen inches in diameter, blazed and marked B. T. 1/7263 A, bears south thirty-six degrees and forty-five minutes west, thirty-eight and eight-tenths feet distant; a spruce ten inches in diameter blazed and marked B. T. 1/7263 A, bears south one degree and thirty-five minutes east fifty-three and seven-tenths feet distant, and the face of discovery cut bears south five degrees and twenty-five minutes west five hundred and forty-nine feet distant.

Thence, first course, south ten degrees and ten minutes east, one thousand and seventy-six and sixty-four hundredths feet intersect line 1/2 of survey No. 7406, the New York Lode claim; one thousand, two hundred and seventy-eight and six-tenths feet to corner No. 2.

Thence, second course, south eighty degrees and twenty-eight minutes west, two hundred and one and fifty-four hundredths feet intersect line 3/4 of said survey No. 7406; two hundred and ninety-seven and seven-tenths feet to corner No. 3.

Thence, third course, north ten degrees and four minutes west two hundred and eighteen and three-hundredths feet intersect line 3/4 of said survey No. 7406; eight hundred and seventy-nine and seventy-seven hundredths feet intersect line 1/2 of said survey No. 7406; one thousand two hundred and seventy-eight and thirty-four hundredths feet to corner No. 4.

Thence, fourth course, north eighty degrees and twenty-eight minutes east two hundred and ninety-five and six-tenths feet to corner No. 1, the place of beginning; expressly excepting and excluding from these presents all that portion of the ground, hereinbefore described, embraced in said mining claim or survey No. 7406

6 and also all that portion of said Last Chance vein or lode and of all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground; said lot No. 7263 A., extending one thousand two hundred and seventy-eight and thirty-four hundredths feet in length along said Last Chance vein or lode, the granted premises in said lot containing five acres and twenty-five hundredths of an acre of land, more or less.

Now know ye, that there is therefore hereby granted by the United States unto the said Ralph Grauger, Erich von Buddenbrock and Theodore Reininger, and to their heirs and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Last Chance vein, lode or ledge, and of all other veins, lodes and ledges, throughout their entire depth, the tops and apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 7263 A, extended downward vertically, although such veins, lodes or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises; provided, that the right of possession to such outside parts of said veins, lodes or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 7263 A, so continued in their own direction that such planes will intersect such exterior parts of said veins, lodes or ledges; and provided further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantees above named, and to their heirs and assigns forever; subject nevertheless to the above-mentioned and the following conditions and stipulations:

First. That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode, or ledge.

Second. That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

Third. That in the absence of necessary legislation by Congress, the legislature of Colorado may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and *and* the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington the fifth day of July, in the year of our Lord one thousand, eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

By the President:

[SEAL.]

GROVER CLEVELAND,
By M. McKEAN, *Secretary*.

L. Q. C. LAMAR,

Recorder of the General Land Office.

7 The New York Lode mining claim, which is not owned by either of the parties, but was, as originally located, in conflict as to its surface area with both, was patented on the 5th day of April, 1894, upon an entry of the 26th of August, 1893, taking all of the ground in conflict between it and the Last Chance.

The patent to said lode is as follows:

General Land Office No., 24151. Mineral certificate No. 297.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the plat and field-notes of survey and the certificate, No. 297, of the register of the land office at Del Norte, in the State of Colorado, accompanied by other evidence whereby it appears that A. L. Shear did, on the twenty-sixth day of August, A. D. 1893, duly enter and pay for that certain mining claim or premises, known as the New York Lode mining claim designated by the surveyor general as lot No. 7406, embracing a portion of sections thirteen and twenty-four, in township forty-two north, of range one west, New Mexico meridian, in the Sunnyside mining district, in the county of Mineral and State of Colorado, in the district of lands subject to sale at Del Norte, and bounded, described and platted as follows, with magnetic variation fifteen degrees east:

Beginning at corner No. 1, a pine post five inches square marked 1/7406, in mound of stones, from which U. S. location monument No. 7333 bears north twenty-six degrees, forty-three minutes and thirty seconds west one thousand seven hundred and sixty-five and eight-tenths feet distant; the west quarter corner of section twenty-four in township forty-two north range one west, New Mexico meridian, bears south thirty degrees west two thousand six hundred and sixty and five-tenths feet distant; corner No. 3 of survey No. 7347, the Sunnyside Lode claim, bears north fifty-six degrees and thirty minutes west one hundred and seventeen and seventy-six hundredths feet distant; corner No. 2 of survey No. 7296, the

Annie Rooney Lode claim, bears north fifteen degrees and twenty-one minutes east one hundred and thirteen and thirty-nine hundredths feet distant; corner No. 6 of survey No. 7296, the Forrest King Lode claim, bears north fifty-six degrees and fifteen minutes west two hundred and two and fifty-four hundredths feet distant; corner No. 2 of survey No. 7263 A, the Last Chance Lode claim, bears north forty-five degrees and twenty-seven minutes west three hundred and ninety-six and fifty-five hundredths feet distant; a red spruce tree sixteen inches in diameter blazed and marked B. T. 1/7406 bears south eighty-two degrees and forty-four minutes west six and eighty-five hundredths feet distant; and a red spruce tree eight inches in diameter blazed and marked B. T. 1/7406 bears north thirty-two degrees and fifty-four minutes east five and six-tenths feet distant.

8 Thence, first course, north thirty-three degrees and forty-two minutes west one thousand three hundred and fifty-nine and seven-tenths feet to corner No. 2, from which discovery shaft bears south twenty-three degrees and twenty-one minutes east six hundred and forty-two and eight-hundredths feet distant.

Thence, second course, south sixty degrees and twenty-six minutes west one hundred and twenty-eight and sixty-nine hundredths feet intersect line 6-7 of the Del Monte Lode claim survey No. 7356 at north thirty degrees and twenty-two minutes west one thousand and eighty-nine and seventy-two hundredths feet from corner No. 6; two hundred and sixty-five and sixty-one hundredths feet to corner No. 3.

Thence, third course, south thirty-three degrees and forty-two minutes east one hundred and ninety-three and thirty-eight hundredths feet intersect line 5-6 of said Del Monte Lode claim at south fifty-nine degrees and forty minutes west seventy-three and thirty-three hundredths feet from corner No. 6; one thousand three hundred and fifty-nine and seven-tenths feet to corner No. 4.

Thence, fourth course, north sixty degrees and twenty-six minutes east two hundred and sixty-five and sixty-one hundredths feet to corner No. 1, the place of beginning;

Expressly excepting and excluding from these presents all that portion of the ground, hereinbefore described, embraced in said Del Monte Lode claim, survey No. 7356, which is described as follows: Beginning at corner No. 3 of said lot No. 7406; thence south thirty-three degrees and forty-two minutes east six hundred and sixty-eight and fifty-five hundredths feet; thence, north ten degrees and four minutes west two hundred and eighty-two and seventy-seven hundredths feet; thence, north thirty degrees and twenty-two minutes west three hundred and ninety-nine and ninety-two hundredths feet; thence, south sixty degrees and twenty-six minutes west one hundred and thirty-six and ninety-two hundredths feet to corner No. 3, the place of beginning; also, beginning at corner No. 6 of said Del Monte Lode claim survey No. 7356; thence north thirty degrees and twenty-two minutes west one hundred and fifty-three feet; thence, south eighty degrees and twenty-five minutes west eighty-nine and seventy-six hundredths feet; thence, south thirty-

three degrees and forty-two minutes east one hundred and eighty-four and ninety-four hundredths feet; thence north fifty-nine degrees and forty minutes east seventy-three and thirty-three hundredths feet to corner No. 6, the place of beginning; and also all that portion of said New York vein or lode and of all veins, lodes, and ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground, said lot No. 7406 extending one thousand three hundred and fifty-nine and seven-tenths feet in length along said New York vein or lode, the granted premises in said lot containing six acres and forty-six hundredths of an acre of land, more or less.

Now know ye that there is therefore hereby granted by the United States unto said A. L. Shear, and to his heirs and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said New York vein, lode or ledge, and of all other veins, lodes and ledges, throughout their entire depth, the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 7406 extended downward vertically, although such veins, lodes or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises;

9 provided, that the right of possession to such outside parts of said veins, lodes or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 7406, so continued in their own direction that such planes will intersect such exterior parts of said veins, lodes or ledges: And provided further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to his heirs and assigns forever; subject nevertheless to the above-mentioned and to the following conditions and stipulations:

First. That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode or ledge.

Second. That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs and decisions of the courts. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

Third. That in the absence of necessary legislation by Congress, the legislature of Colorado may provide rules for working the mine

ing claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[SEAL] Given under my hand at the city of Washington, the fifth day of April, in the year of our Lord one thousand, eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

By the President :

GROVER CLEVELAND,
By M. McKEAN, *Secretary*.
L. Q. C. LAMAR,
Recorder of the General Land Office.

The relative locations of the three said claims is correctly shown by a plat marked Exhibit "A," which is hereto attached and made a part of this statement.

(Here follows diagram marked p. 9a.)

When the owners of the Last Chance applied for patent thereto proceedings in adverse under the statute were instituted against it by the owners of the New York lode, and an action in support of such adverse was brought by them in the United States circuit court at Denver, which was numbered 2753, and entitled *Shear vs. Granger and others*, and judgment therein was entered on the 18th of June, A. D. 1892, in favor of the plaintiff, the owner of the New York, and against the defendants, the owners of the Last Chance, awarding all territory in conflict to the New York Lode mining claim.

The Del Monte is the oldest patent, the New York second, and the Last Chance third. The ground in conflict between the New York and Del Monte, except so much thereof as was also in conflict between the Del Monte and Last Chance locations, is included in the patent to the Del Monte claim. The New York secured a patent to all of its territory, except that in conflict with the Del Monte, and the Last Chance in turn secured a patent to all of its territory except that in conflict with the New York, in which last-named patent was included the triangular surface conflict between the Del Monte and Last Chance which by agreement was patented to the latter. The Last Chance claim was located upon a vein, lode, or ledge of silver and lead bearing ore which crosses its north end line and continues southerly from that point through the Last Chance location until it reaches the eastern side line of the New York, into which latter territory it enters, continuing thence southerly with a southeasterly course on the New York claim until it crosses its south end line. No part of the apex of the vein is embraced within the small triangular parcel of ground in the southwest corner of the Last Chance location which was patented to the Last Chance as aforesaid,

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and for the purposes of this controversy only it is conceded that no part of the apex of the vein is within the surface boundaries of the Del Monte Lode mining claim. For the purposes of this suit only, it is conceded by both parties that the position and course of the vein and the workings thereon are shown by the plat hereto attached, marked Exhibit "B," and made a part of this statement, the apex being represented by the dotted line so designated thereon. The vein dips rapidly to the west and is rich in silver and lead.

(Here follows map marked p. 11a.)

The Last Chance Mining and Milling Company, the appellee, has driven what is called a main incline shaft from the apex of the vein upon the Last Chance ground downward and upon the dip of the vein to a depth of over nine hundred feet. This shaft in its downward course has penetrated beneath the eastern boundary of the Del Monte claim and considerably beyond, and levels have been driven upon the vein northerly and southerly from the shaft within the boundaries of the Del Monte, extended downward vertically, from which the Last Chance Company has been extracting, removing, and selling large quantities of valuable ore, and the mining and extracting of said ores has been carried on by the appellee under a claim of ownership of the apex of said vein in Last Chance territory.

The appellant, conceding the position of the apex of the vein as claimed by the appellee, denies its right to follow the same in its downward course into appellant's territory.

The appellant filed its complaint in the court below on the 12th day of March, 1895, praying a temporary writ of injunction until the action of ejectment between itself and the appellee should be determined, to which complaint the defendant answered on the 28th of March, 1895, denying the right of the defendant to the relief prayed for, and pleading the ownership of the apex of the vein as hereinbefore set forth as represented upon said plat, claiming the right to follow said vein in its course downward, even though it so far departed from a perpendicular as to cross the west line of the

12 Last Chance extended downward vertically into the territory of the appellant. The appellant filed its replication thereto on the 29th of March. The case being thus at issue, it was agreed by counsel for the respective parties that the pleadings, together with the patents to the Last Chance, New York, and Del Monte claims, the defendant's plat, a certified copy of the judgment in the case of Shear against Granger, and the affidavits of Schwartz, Darby, and Colwell, should constitute a record upon which final decree might be entered. The case being thereupon submitted, a decree was entered upon the 30th day of March, 1895, dismissing the bill at the cost of the complainant.

The portion of the vein in controversy between the parties to this suit is that portion lying under the surface of the Del Monte claim and between two vertical planes, one drawn through the north end

line of the Last Chance claim extended westerly and the other parallel thereto drawn through the "north compromise line," as shown upon plat marked Exhibit "B," herewith transmitted.

And the said United States circuit court of appeals hereby certifies that, to the end that it may properly decide the questions in said cause and presented by the assignment of errors therein filed, the said court desires the instruction of the Supreme Court of the United States upon the following questions and propositions of law, to wit:

1. May any of the lines of a junior lode location be laid within, upon, or across the surface of a valid senior location for the purpose of defining for or securing to such junior location underground or extralateral rights not in conflict with any rights of the senior location?

13 2. Does the patent of the Last Chance Lode mining claim, which first describes the rectangular claim by metes and bounds and then excepts and excludes therefrom the premises previously granted to the New York Lode mining claim, convey to the patentee anything more than he would take by a grant specifically describing only the two irregular tracts which constitute the granted surface of the Last Chance claim?

3. Is the easterly side of the New York Lode mining claim an "end line" of the Last Chance Lode mining claim within the meaning of sections 2320 and 2322 of the Revised Statutes of the United States?

4. If the apex of a vein crosses one end line and one side line of a lode mining claim, as located thereon, can the locator of such vein follow it upon its dip beyond the vertical side line of his location?

5. On the facts presented by the record herein has the appellee the right to follow its vein downward beyond its west side line and under the surface of the premises of appellant?

In witness whereof the undersigned judges, holding the said United States court of appeals for said eighth circuit, have hereunto set their hands this ninth day of March, A. D. 1896, at St. Louis, Missouri, and order and direct that the foregoing certificate be filed in said circuit court of appeals and by the clerk of said court be duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL,
WALTER H. SANBORN,
AMOS M. THAYER,

*Judges of the United States Circuit Court of Appeals
for the Eighth Circuit.*

14 United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of The Del Monte Mining and Milling Company, appellant, vs. The Last Chance Mining and Milling Company, No. 651, December term, 1895, was duly filed and entered of record in

my office by order of said court and as directed by said court. The said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this ninth day of March, A. D. 1896.

JOHN D. JORDAN,

*Clerk of the United States Circuit Court of Appeals
for the Eighth Circuit.*

[Endorsed:] Original. U. S. circuit court of appeals, eighth circuit. 1895, December term. No. 651. Del Monte Mining and Milling Company, appellant, *vs.* Last Chance Mining and Milling Company. Certificate of questions to the Supreme Court of the United States. Filed Mar. 9, 1896. John D. Jordan, clerk.

Endorsed on cover: Case No. 16,237. U. S. circuit court of appeals, eighth circuit. Term No., 147. The Del Monte Mining and Milling Company, appellant, *vs.* The Last Chance Mining and Milling Company. Certificate. Filed March 21, 1896.